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REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

Social Security Administration Needs To Better Manage The Travel Of Its Administrative Law Judges

Social Security Administration Department of Health, Education, and Welfare

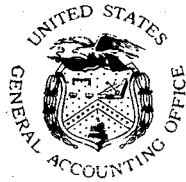
The Social Security Administration has been sending its administrative law judges to Puerto Rico on temporary assignments since 1970 to control the case backlog there.

Two travel practices were of particular concern:

- The authorizing of visits by judges to Puerto Rico when hearing offices near the judges' offices, and in some cases their own offices, were more heavily backlogged.
- The furnishing of more assistance to the Puerto Rico hearing offices than to more heavily backlogged offices.

The Social Security Administration is ineffectively managing interregional travel by its judges and coordinating such travel with office needs.

The Social Security Administration needs a travel policy that will provide assistance in proportion to the needs of all hearing offices while minimizing unnecessary travel and expense.





COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-164031(4)

4. The Honorable Charles McC. Mathias, Jr.
United States Senate

Dear Senator Mathias:

21-22 1 The Social Security Administration's Bureau of Hearings²⁶ and Appeals has been authorizing temporary assignments throughout the country and Puerto Rico to manage the case backlog. Assignments to Puerto Rico, however, have been handled in a manner that can cause criticism of the Bureau.

We found nothing to substantiate allegations that Bureau officials knew that the building housing the San Juan hearing office was a fire hazard or discriminated in employing personnel for the Puerto Rico hearing offices.

We made our review pursuant to your August 26, 1974, request, and we included comments from the Department of Health, Education, and Welfare in this report.

c2- 6 As your office agreed, we are sending copies of this report to the House and Senate Committees on Government Operations and on Appropriations; the Director, Office of Management and Budget; the Secretary of Health, Education, and Welfare; and upon request to other interested parties. -1500
-300

Sincerely yours,

James B. Statts

Comptroller General
of the United States

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ABBREVIATIONS

ALJ	administrative law judge
BHA	Bureau of Hearings and Appeals
GAO	General Accounting Office
SSA	Social Security Administration

COMPTROLLER GENERAL'S
REPORT TO THE HONORABLE
CHARLES McC. MATHIAS, JR.
UNITED STATES SENATE

SOCIAL SECURITY ADMINISTRATION
NEEDS TO BETTER MANAGE THE TRAVEL
OF ITS ADMINISTRATIVE LAW JUDGES
Social Security Administration
Department of Health, Education,
and Welfare

D I G E S T

The New York region of the Social Security Administration's Bureau of Hearings and Appeals has been sending administrative law judges to Puerto Rico on temporary assignments since 1970 to control the case backlog there. Judges were selected for 2-week assignments on a volunteer basis and could choose the time of their trips. (See pp. 3 and 4.)

This policy resulted in their traveling from New York to Puerto Rico about the same time judges residing closer to Puerto Rico were traveling to temporary assignments in the northeast part of the country. (See pp. 4 and 5.)

Administrative law judges also traveled to Puerto Rico when neighboring hearing offices and, in some cases their own offices, were more heavily backlogged. (See p. 5.)

In addition, more assistance was furnished to Puerto Rico offices than to more heavily backlogged offices, such as Flint, Michigan, and Huntington, West Virginia. (See pp. 5 and 6.)

Management of interregional travel by the Bureau of Hearings and Appeals does not provide assistance in proportion to the needs of all hearing offices and may be resulting in unnecessary travel and expense.

GAO recommends that the Secretary of Health, Education, and Welfare direct the Commissioner of the Social Security Administration to make sure that other methods are used to handle long-term backlogs at hearing offices. Examples of these methods are

--detailing administrative law judges for several months,

--reassigning judges temporarily for a year or longer, or

--hiring additional judges. (See p. 8.)

GAO also recommends that the Secretary direct the Commissioner to require that

--all regional requests for assistance in hearing cases that would require interregional travel be made through and approved by the Bureau's central office,

--the authorizing Bureau official(s) fulfill such requests with the nearest available source and coordinate such assistance with the needs of all hearing offices, and

--assistance to a hearing office not be provided by administrative law judges from hearing offices more heavily backlogged than the requesting office. (See p. 8.)

GAO found nothing to substantiate the allegations that:

--The fire which destroyed the Bureau's hearing office in Puerto Rico was foreseeable and avoidable. (See p. 10.)

--The Bureau discriminated in employing personnel for the Puerto Rico hearing offices. (See p. 11.)

The Department of Health, Education, and Welfare generally concurred with our conclusions and recommendations. (See p. 12.)

CHAPTER 1

INTRODUCTION

Pursuant to Senator Charles McC. Mathias' request of August 26, 1974, we investigated the allegations of his constituent regarding

- the unreasonableness of trips made to Puerto Rico by administrative law judges (ALJs) of the Bureau of Hearings and Appeals (BHA),
- the predictability of the fire which destroyed the BHA Puerto Rico hearing office and resulted in the loss of Government property and files for social security claimants, and
- discrimination by BHA in hiring Spanish-speaking professionals.

The Social Security Administration (SSA) pays benefits to eligible individuals under programs for the aged and disabled. For those whose applications are denied, SSA provides formal steps for the reconsideration, hearing, and appeal of their cases. The right to a hearing before an ALJ is part of this process.

To make the ALJ accessible to the claimant, BHA deploys its ALJs in hearing offices throughout the country and Puerto Rico. As of June 22, 1975, BHA employed 441 ALJs in 114 hearing offices in 10 regions, with headquarters in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, St. Louis, Denver, San Francisco, and Seattle. The number of hearing offices in a region ranges from 3 (Denver region) to 27 (Atlanta region). There are three hearing offices in Puerto Rico (San Juan, Ponce, and Mayaguez), which are under the jurisdiction of the New York region.

As of June 7, 1975, approximately 70,000 cases were pending before ALJs. As of May 1975, the median processing time throughout the country was 187 days from the date of receipt of a request for a hearing to the date of the ALJ's decision. The median processing times ranged from 159 days in the Seattle region to 211 days in the Chicago region.

SCOPE OF REVIEW

In conducting our review, we

- interviewed officials of BHA's central office, New York regional office, and San Juan hearing office;

--corresponded with officials of BHA and the San Juan fire department in Puerto Rico; and

--examined files and records of BHA and the General Services Administration and analyzed data obtained through such examinations and furnished by BHA.

As the Senator's office requested, we included information pertaining to the assistance furnished the Puerto Rico hearing offices by ALJs from the Baltimore hearing office.

CHAPTER 2

ALLEGED TRAVEL ABUSES

The allegations charged that:

- Favored ALJs were being sent to Puerto Rico on 2-week working vacations, most often during the peak tourist seasons of the winter and spring.
- The trips were being authorized on the pretext that the backlog there required outside assistance.

BACKLOGS IN PUERTO RICO

We analyzed the caseloads of the three Puerto Rico hearing offices to see if they needed assistance. These three were consistently the most backlogged offices (on the basis of pending hearing requests per ALJ) in the New York region. The San Juan office ranked 23d in the Nation. As of January 31, 1975, 1,375 cases were awaiting disposition, which equaled 13 months of work for each permanent ALJ assigned there. BHA considers a 4-month caseload acceptable.

Attempts to reduce backlogs

Since 1971 BHA has hired 7 new ALJs for Puerto Rico, raising the total ALJs there to 11, and transferred 2 other judges to that office for 1- and 2-year periods.

Since 1970 the New York region has been sending ALJs to Puerto Rico on temporary 2-week assignments to hear cases. They were generally accompanied by their hearing assistants, although in recent years there has been some departure from this practice.

ALJs were selected for these 2-week assignments on a volunteer basis and could choose the time of their trips. If the number volunteering was insufficient, the assistant chief ALJ in charge of the New York region requested volunteers from other regions or through the central office. In one instance, an ALJ from California volunteered and was sent to Puerto Rico.

In fiscal years 1972-74, two-thirds of the trips were made during winter and spring (November 15 to May 15). ALJs from New York made almost all their trips during this period. A former ALJ in New York said he requested and received assignments to Puerto Rico when his wife, a schoolteacher, was on vacation. Of five trips he made between March 1972 and February 1974, two were during the Christmas season.

According to the assistant chief ALJ, only judges in the New York region who were high producers were given assignments to Puerto Rico. He said he didn't use productivity statistics developed by the central office since they can be misleading but relied on his own judgment in approving travel requests. The statistics showed that the 13 judges who went to Puerto Rico from the New York region were, for the most part, among the higher producers for that region. However, only 4 of the 13 were ranked in the top 50 percent nationwide. The New York region ranked next to last of the 10 regions in individual ALJ output, according to the latest available statistics.

QUESTIONABLE TRAVEL TO PUERTO RICO BY ALJs

The records showed that, in several instances, ALJs traveled from New York to Puerto Rico about the same time as other ALJs residing closer to Puerto Rico were traveling to temporary assignments in the northeast.

<u>Period of travel</u>	<u>Itinerary</u>	
	<u>Origin</u>	<u>Destination</u>
Aug. 19-30, 1974	Brooklyn, N.Y.	San Juan, P.R.
Aug. 28, 1974	Orlando, Fla.	Hartford, Conn.
Feb. 11-16, 1974	Atlanta, Ga.	Hartford, Conn.
Feb. 11-22, 1974	Jamaica, N.Y.	San Juan, P.R.
Jan. 7-18, 1974	New Orleans, La.	Manhattan, N.Y.
Jan. 7-18, 1974	Jamaica, N.Y.	San Juan, P.R.
May 14-25, 1973	Albany, N.Y.	San Juan, P.R.
May 21-25, 1973	Miami, Fla.	Hartford, Conn.
Apr. 30-May 11, 1973	Jamaica, N.Y.	San Juan, P.R.
May 7, 1973	Jackson, Miss.	Hartford, Conn.
Apr. 16-25, 1973	Manhattan, N.Y.	San Juan, P.R.
May 1-4, 1973	Richmond, Va.	Manhattan, N.Y.

The same situation apparently occurred when BHA assigned 40 black lung cases to each ALJ nationwide in an effort to reduce the backlog of these cases. Judges traveled from Puerto Rico to Pennsylvania to hear black lung cases while judges from the northeast were traveling to Puerto Rico to hear disability cases. Examples follow.

<u>Period of travel</u>	<u>Itinerary</u>	
	<u>Origin</u>	<u>Destination</u>
Aug. 12-23, 1974	San Juan, P.R.	Wilkes Barre, Pa.
Aug. 19-30, 1974	Brooklyn, N.Y.	San Juan, P.R.
July 29-Aug. 9, 1974	San Juan, P.R.	Wilkes Barre, Pa.
Aug. 5-8, 1974	New York, N.Y.	San Juan, P.R.
July 15-26, 1974	San Juan, P.R.	Pittsburgh, Pa.
July 15-26, 1974	Boston, Mass.	San Juan, P.R.
Apr. 20-May 1, 1974	Ponce, P.R.	Wilkes Barre, Pa.
Apr. 26-May 10, 1974	Albany, N.Y.	San Juan, P.R.
Apr. 22-May 3, 1974	San Juan, P.R.	Wilkes Barre, Pa.
Apr. 15-26, 1974	Boston, Mass.	San Juan, P.R.

In some instances ALJs traveled to Puerto Rico when their own offices had higher backlogs.

<u>Period of travel</u>	<u>Itinerary</u>		<u>Backlogged cases per ALJ</u>	
	<u>Origin</u>	<u>Destination</u>	<u>Home</u>	<u>Puerto Rico</u>
Nov. 22-25, 1974	Baltimore, Md.	Mayaguez, P.R.	81	76
Nov. 25-29, 1974	Paducah, Ky.	Ponce, P.R.	92	72
Nov. 18-22, 1974	Paducah, Ky.	San Juan, P.R.	92	89
June 12-16, 1972	Chicago, Ill.	San Juan and/or	64	53
		Mayaguez, P.R.		61
Nov. 20-Dec. 1, 1972	Chicago, Ill.	San Juan or	64	53
		Mayaguez, P.R.		61

Also the amount of assistance furnished Puerto Rico was much greater compared to the amount of assistance furnished more heavily backlogged offices in the Nation. As of September 1974, the two most heavily backlogged hearing offices were Flint, Michigan, and Huntington, West Virginia. Neither received assistance comparable to that provided the San Juan office from July 1973 to November 1974. The following table shows that, during this period, the San Juan office received almost twice the number of visits by ALJs as the Flint office and almost three times the number of visits as the Huntington office.

<u>Hearing office</u>	<u>Backlog rank (note a)</u>	<u>Number of visits by ALJs</u>
Flint	1	22
Huntington	2	15
San Juan	23	41

a/Ordinal number based on cases pending per ALJ.

Three judges from the Baltimore hearing office made nine visits to Puerto Rico from January 1972 through November 1974. They were assigned a total of 280 cases, or about 14 months' work for 1 ALJ. The backlog as of June 21, 1975, was 1,011 cases in the Baltimore hearing office. One ALJ traveled to San Juan from Baltimore in September 1974 although four other offices within the Philadelphia region, of which Baltimore is a part, had worse backlogs than San Juan. In November 1974, an ALJ from the Baltimore office went to Puerto Rico when his own office was more heavily backlogged.

It was alleged that the ALJs visiting Puerto Rico held hearings only in the morning and used the afternoons for personal purposes. Judges are scheduled to hear 35 or 40 cases during their 2-week stay in Puerto Rico. We questioned how this was possible when, according to BHA statistics, an average experienced ALJ normally processes only 15 to 16 cases per month. The ALJ in charge of the New York region, who was responsible for managing travel to Puerto Rico, advised us that visiting ALJs could handle so many cases in 2 weeks because they only conducted hearings while in Puerto Rico. The procedure, he added, was to have the cases sent to the ALJs before their trips for prehearing development and the ALJs would write the decisions on the cases after returning to their home offices. The ALJ in charge of the San Juan hearing office said he asks visiting judges to leave the office as soon as hearings are concluded due to a lack of space.

The average number of hearings held during a 2-week trip in fiscal year 1974, however, was 30. According to our analysis, the time for hearings held by ALJs visiting Puerto Rico during a 1-year period averaged 49 minutes. Assuming then that hearings for 30 assigned cases took less than 24 hours, the hearing of cases accounts on the average for less than one-third of a visiting ALJ's worktime.

BHA officials subsequently stated that, in up to 90 percent of the cases, other processes, such as prehearing meetings, take time not included in the hearings' records. We could not verify this contention.

TRAVEL BY THE FORMER BHA DIRECTOR

It was alleged that travel abuses by the ALJs are condoned by BHA officials because they also participate in travel for personal benefit. The only such official mentioned was Mr. H. Dale Cook, BHA Director from July 19, 1971, to December 30, 1974.

Mr. Cook was alleged to have attended the annual football games between the Universities of Colorado and Oklahoma at

Government expense by scheduling visits to district offices in the area of the games. His travel vouchers show that he made only one trip to Oklahoma City, Oklahoma, at Government expense. This trip, made in July 1973, was not during the University of Oklahoma's football season. In total, he made 34 trips from Arlington, Virginia, to various parts of the country while Director of BHA. Sixteen of these included side trips to Oklahoma City at a personal expense ranging from \$22 to \$50. According to Mr. Cook, the trips to Oklahoma City were to visit his wife and children, who maintained a permanent residence there while he was BHA Director.

All his travel vouchers had been paid without administrative approval. The Department of Health, Education, and Welfare travel manual provides that all reimbursement vouchers be examined and approved by the official responsible. An official of SSA's travel section informed us that during this period approval of travel vouchers submitted by bureau and office heads was not required because these individuals were aware of a traveler's responsibilities in claiming reimbursement for official travel expenses. The Commissioner of SSA has instructed that bureau and office heads must have their travel approved before payment.

NEED FOR NATIONWIDE COORDINATION OF TRAVEL

We issued a letter report to the Commissioner of SSA on June 28, 1971, recommending the establishment of a national travel policy for BHA's hearing examiners (now titled administrative law judges). The report cited:

- Instances when hearing examiners traveled to assist offices with a lesser workload than their home offices.
- An instance when an east coast examiner visited a west coast office to assist with the workload, while about the same time an examiner from the same west coast office visited a midwest office for the same reason.

While our present review concerned the travel practices relating to assignments in Puerto Rico, we have observed situations similar to those noted in the June 1971 report. (See pp. 4 to 6.)

CONCLUSIONS

Although temporary volunteer duty assignments to Puerto Rico help control the backlogs there, BHA's management of

these assignments can only cause criticism. The volunteer concept should be eliminated along with allowing ALJs to select the time and location of travel assignments.

These two BHA practices were of particular concern:

- The authorizing of visits by ALJs to Puerto Rico when hearing offices near the traveling ALJs' offices, and in some cases their own offices, were more heavily backlogged.
- The furnishing of more assistance to the Puerto Rico hearing offices than to more heavily backlogged offices.

Apparently BHA is still ineffectively managing inter-regional travel by the ALJs and coordinating such travel with office needs. BHA needs a travel policy that will provide assistance in proportion to the needs of all hearing offices while minimizing unnecessary travel and expense.

RECOMMENDATIONS

We recommend that the Secretary of Health, Education, and Welfare direct the Commissioner of the Social Security Administration to make sure that other methods are used to handle long-term backlogs at hearing offices such as

- detailing of ALJs for several months,
- reassigning ALJs temporarily for a year or longer, or
- hiring additional ALJs.

We recommend also that the Secretary direct the Commissioner to require that

- all requests from BHA's regions for assistance in hearing cases that would require interregional travel be made through and approved by BHA's central office,
- the authorizing BHA official(s) fulfill such requests from the nearest source and coordinate such assistance with the needs of all hearing offices, and
- assistance to a hearing office not be provided by ALJs from hearing offices more heavily backlogged than the office requesting such assistance.

AGENCY ACTIONS

In January 1975, BHA instructed its New York region not to assign volunteers from outside the region to Puerto Rico. The region has developed new guidelines for selecting ALJs for travel to Puerto Rico. These had not been implemented as of April 1975. The region was still sending volunteers to Puerto Rico through April 28, 1975, when, according to the assistant chief ALJ in New York, all temporary assignments to Puerto Rico were stopped.

All interregional travel must now be approved by the chief judge in the central office.

BHA has been authorized to hire 9 more judges for the 3 Puerto Rican offices and 75 judges nationwide. When all authorized slots are filled, BHA will have 20 ALJs permanently assigned to Puerto Rico.

CHAPTER 3

OTHER ALLEGATIONS INVESTIGATED

FIRE IN EL IMPARCIAL BUILDING

It was alleged that:

--The fire which destroyed BHA's hearing office in the El Imparcial Building in San Juan was predictable but was not averted because of the indifference of high-ranking BHA officials.

--The building was a known firetrap.

Shortly after BHA moved into the El Imparcial in December 1971, the agency began complaining to the General Services Administration about the space. Although the complaints were numerous, fire safety was not mentioned. Because of numerous deficiencies, the office was to be moved. However, it was destroyed by fire on April 22, 1973.

In all, 242 claim files were partially or fully destroyed in the fire, and, as of August 1974, 125 of these remained unprocessed. This failure to process was attributed to the need for further medical documentation and BHA's inability to contact some claimants. In addition to the claim files, the Federal Government's property loss was estimated at \$50,000.

To determine whether the building was a known fire hazard and whether the cause of the fire was identified, we reviewed several fire reports and talked with officials in Puerto Rico. One General Services Administration report stated that fire department officials in Puerto Rico did not report the cause of the fire, although it was believed to have been caused by either a short circuit or spontaneous combustion. Another stated that "At no time during their occupancy did HEW make note of any fire hazards." The ALJ in charge of the San Juan office said (1) the fire department had never informed him that the building was a fire hazard and (2) although he had inspected the building, he was concerned primarily with its lack of adequate sanitary facilities and other health and safety hazards.

A fire department official confirmed that no written report had been sent to BHA, but such a warning could have been delivered in person.

ALLEGED DISCRIMINATORY HIRING PRACTICES

It was alleged that the San Juan hearing office was deliberately kept short handed to perpetuate the working-vacation scheme and that BHA refused to hire Spanish-speaking professionals.

The assistant chief ALJ in New York initially said he did not believe BHA should hire another permanent judge for Puerto Rico, because if the office's backlog declined, it could become overstaffed. Adding permanent staff could then evoke criticism. Later he reversed this position and requested additional judges be hired. His recommendations to the central office became part of a request made by BHA to the Civil Service Commission in June 1974 to hire additional ALJs nationwide.

Regarding the refusal of BHA to hire Spanish-speaking professionals, at the time of our review, 11 ALJs were assigned to the 3 Puerto Rico hearing offices. Of the 11, 9 were native Puerto Ricans. In addition, 90 percent of the total professional and nonprofessional staff in the three offices were native Puerto Ricans.

CONCLUSION

We found nothing to support the allegations that (1) the fire which destroyed BHA's hearing office in Puerto Rico was predictable but was not averted because of the indifference of BHA officials or (2) BHA discriminated in employing personnel for the Puerto Rico hearing offices.

CHAPTER 4

AGENCY COMMENTS AND OUR EVALUATION

In a letter dated October 15, 1975, (see app. I) the Department of Health, Education, and Welfare, for the most part, agreed with our report. The Department points out that BHA has taken steps to improve the management of travel by ALJs, including the establishment of specific policies and standards for ALJ travel to Puerto Rico.

The Department concurred in our recommendation that SSA take steps to assure that other methods are used in the handling of long-term backlogs at hearing offices.

It also concurred in our recommendation to have SSA require that

- all requests from BHA's regions for assistance in hearing cases that would require interregional travel be made through and approved by BHA's central office and
- assistance to a hearing office not be provided by ALJs from hearing offices more heavily backlogged than the office requesting such assistance.

The Department concurred only in part with our recommendation to have SSA require that

- the authorizing BHA official(s) fulfill such requests from the nearest source and coordinate such assistance with the needs of all hearing offices.

The Department points out that each BHA regional chief ALJ is now required to fill all requests for assistance from within his region using the nearest available resource and coordinating such requests and assistance with the needs of all hearing offices. It adds that the backlog in Puerto Rico is primarily a regional problem which must be handled through the regional office in New York.

We disagree that Puerto Rico's backlog should be considered primarily a regional problem and that requests for assistance from the Puerto Rico hearing offices should be filled from within the region. The separation of Puerto Rico by such a large distance from the remainder of the New York region (New York and New Jersey) presents a unique situation. The policy recommended by the Department ignores two important considerations:

--There are many hearing offices located in other regions which are closer to Puerto Rico,

--Some of these offices may be better able to provide assistance because their workload is smaller.

Consequently, we believe providing assistance to Puerto Rico should be a BHA headquarters task. Such assistance should be provided from the nearest available source able to bear the additional burden. This would be in line with our recommendations. We should point out, however, that providing assistance to Puerto Rico is a temporary measure and should not be used unless those more permanent measures for dealing with the Puerto Rico backlog that we have recommended, and which have been accepted by the Department, cannot be implemented.

The Department takes exception to our analysis showing that the hearing of cases accounts on the average for less than one-third of a visiting ALJ's worktime. It points out that a great deal of case work is required of an ALJ other than merely holding hearings and states that an ALJ must do much of the prehearing and posthearing development required for each case and must review new evidence introduced at the hearing and write a fair decision. The Department added that simply discussing the length of a hearing does not deal fairly with, or accurately reflect, the allocations of an ALJ's time. It also mentions that (1) we were unable to verify the validity of statements that other work, not included in the records of hearings, requires considerable ALJ time and (2) the report does not cite any specific examples of ALJs not fully utilizing their official time while in Puerto Rico.

We agree the ALJs spend a considerable amount of time in the prehearing and posthearing development of a case and in the writing of a decision for the case once the hearing is held. However, we were told by the assistant chief ALJ in charge of the New York region that these activities were performed by the ALJs at their home office either before or after their trip to Puerto Rico. Only holding hearings while in Puerto Rico was the explanation the assistant chief ALJ gave us for the ability of the visiting ALJs to hear 35 to 40 cases during their 2-week visit--approximately 5 times their average production. This procedure was confirmed in part by the ALJ in charge of the San Juan hearing office. He said that cases which were going to be heard by visiting ALJs were sent to them before their trip. He also told us that once the visiting ALJs have completed their hearings he asks that they leave because of limited space and distraction to office workers. We also found support that this procedure was followed in numerous BHA memos which showed the transfer of cases from

the San Juan hearing office to various stateside hearing offices for purposes of the ALJ's review before his visit.

We also agree an ALJ spends additional time in holding a hearing beyond that shown in the hearing record. It should be noted, however, that the Department made no effort to provide us with any evidence of the average length of this time either during our review or in its comments made on our draft report. In view of the lack of evidence to support any contention that this amount of time was substantial for the ALJs visiting Puerto Rico, we were unable to make any verification. Although we did not consider this time, we believe our analysis remains valid because we find it questionable that this additional time on the average is twice as long as the actual time spent in hearing the case. This would be necessary to account for the extra worktime available to the visiting ALJs in view of our analysis showing the hearing of cases accounts on the average for less than one-third of their worktime.

The Department commented that the report does not cite any specific examples of ALJs not fully utilizing their official time while in Puerto Rico. Our audit was not intended to be an investigation of individual ALJs' activities. We found no documentation, however, which suggested the visiting ALJs did anything less than what was expected of them by BHA, that is, to travel to Puerto Rico and hold hearings for the cases they were assigned.

The Department comments that BHA's data indicates the San Juan hearing office ranks 8th in total cases pending as compared to our ranking of that office as 23d in the number of cases pending per ALJ. By way of clarification, the difference is primarily due to BHA's use of total cases pending per hearing office and our use of total cases pending per ALJ per hearing office. We believe the number of cases pending per ALJ is a better basis for ranking a hearing office with other hearing offices as it shows the ALJs' workload at each office.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OCT 15 1975

Mr. Gregory J. Ahart
Director, Manpower and
Welfare Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report to the Congress entitled, "Need for the Bureau of Hearings and Appeals to Better Manage the Travel of Its Administrative Law Judges." They are enclosed.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,


John D. Young
Assistant Secretary, Comptroller

Enclosure

COMMENTS ON GAO DRAFT REPORT ENTITLED "NEED FOR THE BUREAU OF HEARINGS
AND APPEALS TO BETTER MANAGE THE TRAVEL OF ITS ADMINISTRATIVE LAW
JUDGES"

For the most part we are in agreement with GAO's draft report. The Bureau of Hearings and Appeals (BHA) has taken steps to improve the management of travel by administrative law judges (ALJs). These steps include the establishment, in January 1975, of specific policies and standards for ALJ travel to Puerto Rico. We believe that the implementation of these new procedures, together with other actions being taken, have significantly increased the efficiency and effectiveness of BHA's operations.

In describing the workload handled by ALJs traveling to Puerto Rico, the report makes the assumption that on the average the hearings of cases accounted for less than one-third of a visiting ALJ's work time, and then states that GAO was unable to verify the validity of statements that other work, not included in the records of hearings, required considerable ALJ time. We are concerned that the way in which this matter is presented in the report will lead a reader to draw incorrect and unfair conclusions and opinions. An ALJ cannot limit his time to merely holding hearings. A great deal of other case work is required of him. For example, an ALJ must do much of the post- and pre-hearing development required for each case. He must review new evidence introduced at the hearing and write a decision that will be fair to both the claimant and the Government. Furthermore, the bilingual nature of the hearings in Puerto Rico adds substantially to the complexity of these cases. In short, simply discussing the length of a hearing, as is done in the draft report, does not deal fairly with, or accurately reflect, the allocation of an ALJ's time. We would like to point out also that the report does not cite any specific examples of ALJs not fully utilizing their official time while in Puerto Rico.

The draft report states that the San Juan office ranks 23rd in the Nation in the number of hearing requests pending per ALJ. BHA's data, as of July 19, 1975, indicates that San Juan ranks eighth in the number of total cases pending, with almost one-third of Region II's pending cases being located in Puerto Rico. As of that date, there were 1,280 cases pending in the San Juan hearing office and, in addition, approximately 700 more cases were in the New York Development Center being developed and translated. Thus, almost 2,000 cases were pending for San Juan, which is equal to 16 months' work for each of the ALJs permanently assigned there. While the case production of ALJs in Puerto Rico has increased, additional judges are needed in that location. In light of the great difficulty we have had in obtaining candidates from Civil Service Commission certificates who are interested in permanent assignments to Puerto Rico,

it seems clear that we will have to continue to detail ALJs in order to reduce the serious backlog.

With respect to GAO's conclusion that we should discontinue detailing ALJs to Puerto Rico on a voluntary basis, present BHA policy requires the Regional Chief Administrative Law Judge in Region II to select detailees from an alphabetical listing of ALJs in the Region. Further, an ALJ may not be selected unless the workload in his own office is at least 30 percent below the backlog in Puerto Rico.

GAO Recommendation

That SSA take steps to assure that other methods--such as the detailing of ALJs for several months, the temporary reassignment of ALJs for periods of a year or longer, or the hiring of additional ALJs--are used in the handling of long-term backlog situations at hearing offices.

SSA Comments

We concur in general with the recommendation. Listed below are some of the major initiatives that BHA has undertaken during the past few months to deal with the backlog situation, not only in Puerto Rico but throughout the country:

- A total of approximately 50 hearings and appeals analysts have been sent from BHA's Central Office to 35 hearings offices with the greatest backlog to assist ALJs in deciding more cases, and an additional 30 to 40 will be sent in the near future. Some of this next group will be sent to Puerto Rico to assist judges permanently assigned there. Past experience has shown that they will have a very positive effect on ALJ production.
- An extensive Staff Attorney Support Program is presently underway which will add 196 staff attorneys to the BHA rolls during the months of September and October. Twelve of these positions have been allocated to the hearing offices in Puerto Rico. This program is designed to augment the ALJ corps so that more hearings can be held and more decisions issued.
- Additional ALJs and Supplemental Security Income (SSI) Hearings Examiners have been, and are being, recruited. Nineteen new ALJs completed training in April 1975, and another class of 43 completed training in August. Twenty-seven Hearing Examiners completed training in April and another 10 in August 1975. As we

mentioned earlier, however, BHA continues to have great difficulty in recruiting ALJs who are interested in permanent assignment to Puerto Rico.

- The Bureau of Disability Insurance has been screening cases, located in hearing offices, to identify those that may be remanded for immediate payment rather than await assignment to an ALJ.
- An additional 250 clerical positions have been authorized in regions where the backlogs are the greatest to assist the ALJs in processing cases. Six of these positions have been authorized for Puerto Rico.

As for detailing ALJs for periods of several months and the temporary reassignment of ALJs for periods of a year or longer, BHA is actively considering these alternatives. In this connection, efforts are now underway to send ALJs to Puerto Rico for periods longer than two weeks, providing such detail is consistent with the workload of the ALJ's own office.

GAO Recommendation

That SSA require that:

- all requests from BHA's regions for assistance in hearing cases that would require interregional travel be made through and approved by BHA's central office;
- the authorizing BHA officials fulfill such requests with the nearest available source and coordinate such requests and assistance with the needs of all hearing offices;
- assistance to a hearing office not be provided by ALJs from hearing offices more heavily backlogged than the office requesting such assistance.

SSA Comments

We concur in the first item of GAO's recommendation. Policies and procedures now in effect require that requests for assistance involving inter-regional travel be made through and approved by BHA central office.

We concur in part with the second item of the recommendation. Each Regional Chief Administrative Law Judge is now required to fill all requests for assistance by particular offices within his region using the nearest available resource, and to coordinate all such requests and assistance with the needs of all hearing offices. This requirement applies to each BHA Regional Office, including Region II. The backlog in Puerto Rico is primarily a regional problem that must be handled through the Regional Office in New York. Within that framework, we are and will continue to look at the best way to provide manpower and resources for Puerto Rico to assist in disposing of the backlog.

We concur in the last item of the recommendation. Present policy provides that ALJ details will not be made from offices more heavily backlogged than the office requesting assistance.